

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 28 1998

In the Matter of)
)
Petition of U.S. West Communications Inc.) CC Docket No. 98-157
For Forbearance from Regulation as a)
Dominant Carrier in the)
Phoenix, Arizona, MSA)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF BELL ATLANTIC¹

This petition presents the Commission with an opportunity to make good on its own commitment to remove services from price regulation as soon as there is a competitive alternative available for those services. As the Commission has acknowledged, regulating prices becomes "unnecessary or counterproductive as market forces become operational." *Price Cap performance Review*, 11 FCC Rcd 858, ¶21 (1995).

The Commission has for some time recognized the need to set a clear framework to allow local exchange carriers the ability to accomplish such removal routinely once they have met some predetermined competitive threshold. *Price Cap Performance Review*, 12 FCC Rcd 16642, ¶1 (1997). (Commission is seeking a framework to "allow services to be more readily removed from price regulation as warranted by the

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

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development of a competitive marketplace”). Such a pre-set framework would obviate the need to resolve issues raised by the commenters here in piece-meal fashion every time a carrier seeks to remove a service from price regulation. When the Commission considers that this petition addresses a small number of services of a single carrier in one small geographic segment of the market, the scope of the potential problem becomes readily apparent. Unfortunately, while competition has grown dramatically in the last few years,² the Commission has yet to act. Bell Atlantic is hopeful that the Commission’s most recent notice will be the catalyst for Commission action rather than for further study. In the meantime, the Commission should act quickly to resolve petitions such as this one.

Adopting a pre-set framework for pricing deregulation will also eliminate the need to repeatedly address some of the specious arguments raised in response to this petition. Competitors of U.S. West for the very services under consideration here are those that are the most vociferous in arguing that competition for high capacity special access service is lacking. In fact, competition for high capacity services is pervasive, and not just in the limited geographic area included in the U.S. West petition.³ As the Chairman has acknowledged, it is obvious to “see competition for high volume

² In comments filed this week to refresh the record in Access Reform, Bell Atlantic summarized the consensus view of analysts, economists and the Commission that local exchange carrier competition is growing at a much faster pace than it did after the long distance market was opened. *See* Bell Atlantic Comments On Notice To Refresh The Record, CC Docket No. 96-262 at 7-11 (filed Oct. 26, 1998).

³ For example, in the large urban areas where high capacity demand in the Bell Atlantic region is concentrated, virtually the entire market has a competitive alternative available and nearly every other high capacity line purchased is sold by a competitive provider.

customers.” Statement of W. Kennard before Subcommittee on Communications United States Senate (June 10, 1998).

AT&T claims that this petition runs counter to the Commission’s market-based approach to regulation of access services. AT&T at 3. But, as the Commission understood, the “market-based approach will permit, and indeed, require [the Commission] progressively to deregulate the access charge regime as competition develops.” *Access Charge Reform*, 12 FCC Rcd 15982, ¶49 (1997). This is exactly what the U.S. West petition seeks to accomplish.

Several commenters argue that the Commission can not grant pricing freedom for high capacity special access service because of a claimed lack of competition for switched access and local services. *See* GST at 12-13, Sprint at 5, Quest at 3. But that means that the Commission could not give local exchange carriers pricing freedom for *any* service until *all* local exchange carrier services are sufficiently competitive. This is inconsistent with the Commission’s stated policies and makes no economic sense. The services that commenters point to would remain under price regulation even if the petition were granted in full. Thus, the Commission would retain sufficient regulation to assure no economic harm could come to carriers that are dependent on these other services.

Commenters also argue that even if there is sufficient competition for high capacity services, the Commission should deny the petition because of the potential for cross subsidization. But, as the Commission itself has acknowledged, the implementation of price cap regulation severs the “direct link between any improperly shifted costs and regulated basic service prices” thereby undermining the incentive to cross-subsidize.

Computer III Remand Proceedings, 6 FCC Rcd 174, 179 (1990). As economists have widely recognized, “[w]ith price caps, cost-shifting is no longer a possibility since prices cannot be affected by any manipulation of cost accounts.” Affidavit of Robert W.

Crandall, ¶ 8, attached to Bell Atlantic Comments, CC Docket No. 96-21 (Mar. 13, 1996). Consequently, as Professor Alfred Kahn has explained, a price cap regulated local exchange carrier “is no more able to cross-subsidize than an unregulated firm.” Affidavit of Alfred E. Kahn, ¶ 27, attached to Reply Comments of Bell Atlantic, CC Docket No. 94-1 (June 29, 1994).

Incumbent local exchange carriers can have no reasonable expectation of recouping lost profits that they would forgo by under-pricing competitive special access service. The only way to recoup such forgone profits is to charge monopoly prices after eliminating the competition for high capacity special access services. But competition for these services is not going to go away. The competitors for high capacity services include financial giants such as AT&T and WorldCom/MCI that will not be driven out by temporary efforts to under-price special access. These giants have expanded their market presence by buying the largest competitive access providers. In addition, even if the incumbent local exchange carriers could drive competitors out of the special access market, which they can not, the fiber installed by those defunct competitors would remain in the ground to be purchased and operated by another competitor.

Finally, while the commenters disagree as to the proper interpretation of the market share numbers cited by U.S. West, the Commission need not even consider market share in order to determine the competitiveness of this market. Instead, the

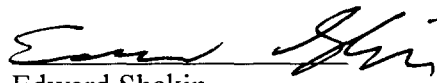
Commission should look to the presence of competitive offerings and the ability of competitors to serve expanded portions of the market. To the extent competitors have the ability to expand quickly, historical market share is misleading. In the market for high capacity special access services, where significant buying power is held by few customers (the largest long distance carriers), historical market share is even more misleading as a measure of future competition. Indeed, with the AT&T purchase of TCG, and the MCI/WorldCom purchase of MFS and Brooks Fiber, the largest buyers of high capacity special access service have themselves purchased the largest competitive suppliers of that service. The result is a dramatic increase in the ability of these customers to self-supply.⁴ This renders meaningless historical market share that predates these fast changing market events.

⁴ For example, one financial analyst estimates that as a result of the MFS and Brooks Fiber acquisitions, the new WorldCom can provide its latest addition, MCI, with more than 70% of its access capacity, and, "given the current expansion plans," that figure should grow to 90%. Jack B. Grubman and Sheri McMahon, Salomon Smith Barney, *WorldCom, Inc.*, Apr. 9, 1998. Similarly, regardless of the impact of AT&T's proposed merger with TCI, AT&T's purchase of TCG is expected to result in \$1.1 to \$1.5 billion in synergy savings in 1999, of which more than half are expected to be network access savings. Prudential Securities, *AT&T Company Update*, Jan. 21, 1998.

Conclusion

The Commission should act quickly, both with respect to this petition, and to put into place a framework to allow other carriers to remove from price regulation those services that have a competitive alternative.

Respectfully submitted,


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October 28, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 1998, a copy of Bell Atlantic's foregoing "Reply Comments" was sent by first class mail, postage prepaid, to the parties on the attached list.


Jennifer L. Hoh

* Via hand delivery.

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